

Senate Bill 447

By: Senators Bulloch of the 11th, Tolleson of the 20th, Rogers of the 21st, Williams of the 19th, Hill of the 4th and others

**AS PASSED**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to  
2 contracts for public works, so as to provide certain contractual and purchasing preferences  
3 for materials and in letting contracts to materialmen, contractors, builders, architects,  
4 engineers, and laborers who reside within this state; to provide standards for construction  
5 projects; to provide a definition; to clarify certain provisions and requirements relating to  
6 public employers' verification of employee work eligibility; to amend Title 20 of the Official  
7 Code of Georgia Annotated, relating to education, so as to provide certain contractual and  
8 purchasing preferences for vendors who reside within this state; to provide for related  
9 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for  
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to contracts for  
14 public works, is amended by adding a new Code section to Part 1 of Article 1, relating to  
15 bonds, to read as follows:

16 "13-10-3.

17 (a) For the purpose of determining residency under this Code section, a Georgia resident  
18 business shall include any business that regularly maintains a place from which business  
19 is physically conducted in Georgia for at least one year prior to any bid or proposal  
20 submitted pursuant to this Code section or a new business that is domiciled in Georgia  
21 which regularly maintains a place from which business is physically conducted in Georgia;  
22 provided, however, that a place of business shall not include a post office box, site trailer,  
23 or temporary structure.

24 (b) Whenever the state contracts for the doing of a public work, materialmen, contractors,  
25 builders, architects, engineers, and laborers resident in the State of Georgia are to be  
26 granted the same preference over materialmen, contractors, builders, architects, engineers,  
27 and laborers resident in another state in the same manner, on the same basis, and to the

same extent that preference is granted in awarding bids for the same goods or services by such other state to materialmen, contractors, builders, architects, engineers, and laborers resident in such other state over materialmen, contractors, builders, architects, engineers, and laborers resident in the State of Georgia. However, these requirements shall in no way impair the ability of the state to compare the quality of materials proposed for purchase and to compare the qualifications, character, responsibility, and fitness of materialmen, contractors, builders, architects, engineers, and laborers proposed for employment in its consideration of the purchase of materials or employment of persons. This subsection shall not apply to transportation projects for which federal aid funds are available.

(c) All state agencies, authorities, departments, commissions, boards, and similar entities shall adhere to the policies and procedures contained in the State Construction Manual for project management and procurement of, and contracting for, design, construction, and other project related professional services for all state owned buildings in Georgia funded by state bonds or other state revenue. The State Construction Manual shall be jointly edited and posted on a state website by the Georgia State Financing and Investment Commission and the Board of Regents and shall be updated on a periodic basis to reflect evolving owner needs and industry best practices after consultation with other state agency and industry stakeholders."

## **SECTION 2.**

Said chapter is further amended by revising Code Section 13-10-90, relating to definitions relative to security and immigration compliance, by adding a new paragraph to read as follows:

"(2.1) 'Physical performance of services' means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property, including the construction, reconstruction, or maintenance of all or part of a public road; or any other performance of labor for a public employer under a contract or other bidding process."

## **SECTION 2.A**

Said chapter is further amended by revising subsection (b) of Code Section 13-10-91, relating to the verification of new employee eligibility, applicability, and rules and regulations, as follows:

"(b)(1) No public employer shall enter into a contract pursuant to this chapter for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify information of all newly hired employees or subcontractors. Before a bid for any such service is considered by a

public employer, the bid shall include a signed, notarized affidavit from the contractor attesting to the following:

(A) The affiant has registered with and is authorized to use the federal work authorization program;

(B) The user identification number and date of authorization for the affiant; and

(C) The affiant is using and will continue to use the federal work authorization program throughout the contract period.

An affidavit required by this subsection shall be considered an open public record once a public employer has entered into a contract for physical performance of services; provided, however, that any information protected from public disclosure by federal law or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained by the public employer for five years from the date of receipt.

(2) No contractor or subcontractor who enters a contract pursuant to this chapter with a public employer or a contractor of a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all newly hired employees. Any employee, contractor, or subcontractor of such contractor or subcontractor shall also be required to satisfy the requirements of this paragraph.

(3) Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a condition of any contract or subcontract entered into pursuant to this chapter, provide a public employer with notice of the identity of any and all subsequent subcontractors hired or contracted by that contractor or subcontractor. Such notice shall be provided within five business days of entering into a contract or agreement for hire with any subcontractor. Such notice shall include an affidavit from each subsequent contractor attesting to the subcontractor's name, address, user identification number, and date of authorization to use the federal work authorization program.

(4) Contingent upon appropriation or approval of necessary funding and in order to verify compliance with the provisions of this subsection, each year the Commissioner shall conduct no fewer than 100 random audits of public employers and contractors. The results of the audits shall be published on the [www.open.georgia.gov](http://www.open.georgia.gov) website and on the Georgia Department of Labor's website no later than December 31 of each year. The Georgia Department of Labor shall seek funding from the United States Secretary of Labor to the extent such funding is available.

(5) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to this subsection shall be guilty of a violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided

in such Code section. Contractors and subcontractors convicted for false statements based on a violation of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction."

### SECTION 3.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by revising Code Section 20-2-500, relating to promulgation of rules and regulations by the State Board of Education for contracts or purchases over \$100.00, as follows:

"20-2-500.

(a) The State Board of Education is authorized to promulgate rules and regulations to regulate contracts or purchases which involve the aggregate sum of \$100.00 or more for or on behalf of students of any public elementary or secondary school supported in whole or in part from public funds.

(b)(1) Such rules shall provide that such contracts for or purchases of supplies, materials, equipment, or agricultural products, including but not limited to school buses but not including instructional materials or beverages for immediate consumption, for public elementary and secondary schools supported in whole or in part from public funds shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(2) Such rules shall provide that, in determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the local school district shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. No local school district shall divide a contract or purchase which exceeds \$100,000.00 for the purpose of avoiding the requirements of this paragraph.

(c) Vendors resident in the State of Georgia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state to vendors resident therein over vendors resident in the State of Georgia.

~~(c)~~(d) Nothing in this Code section shall negate the requirements of Code Section 50-5-73."

135 **SECTION 4.**

136 This Act shall become effective on July 1, 2010, and shall apply to all contracts which are  
137 first advertised or otherwise given public notice on or after that date.

138 **SECTION 5.**

139 All laws and parts of laws in conflict with this Act are repealed.